

SENATE, No. 1082

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 22, 2018

Sponsored by:

Senator NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Provides tax credits to vineyards and wineries for qualified capital expenses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/26/2018)

1 AN ACT providing tax credits to vineyards and wineries for
2 qualified capital expenses and supplementing Title 54A of the
3 New Jersey Statutes and P.L.1945, c.162 (C.54:10A-1 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. As used in sections 2 through 4 of P.L. , c. (C.)
9 (pending before the Legislature as this bill):

10 “Director” means the Director of the Division of Taxation in the
11 Department of the Treasury.

12 “Qualified capital expense” means any expenditure made by the
13 taxpayer for the purchase and installation of equipment or agricultural
14 materials for use in the production of agricultural products at a
15 vineyard or winery, including:

- 16 a. barrels;
- 17 b. bins;
- 18 c. bottling equipment;
- 19 d. canopy management machines;
- 20 e. capsuling equipment;
- 21 f. chemicals;
- 22 g. corks;
- 23 h. crushers;
- 24 i. deer control fencing;
- 25 j. destemmers;
- 26 k. fermenters or other recognized fermentation devices;
- 27 l. fertilizer and soil amendments;
- 28 m. filters;
- 29 n. fruit harvesters;
- 30 o. fruit plants;
- 31 p. hoses;
- 32 q. irrigation equipment;
- 33 r. labeling equipment;
- 34 s. lugs;
- 35 t. mowers;
- 36 u. poles;
- 37 v. posts;
- 38 w. presses;
- 39 x. pruning equipment;
- 40 y. pumps;
- 41 z. refractometers;
- 42 aa. refrigeration equipment;
- 43 bb. seeders;
- 44 cc. soil;
- 45 dd. small tools;
- 46 ee. tanks;
- 47 ff. tractors;
- 48 gg. vats;
- 49 hh. weeding and spraying equipment;

- 1 ii. wine tanks;
- 2 jj. wire; and
- 3 kk. any other items as approved by the director in consultation
- 4 with the Secretary of Agriculture.

5 “Vineyard” means agricultural lands located in the State consisting
6 of at least 1 contiguous acre dedicated to the growing of grapes or
7 other fruit that are used or are intended to be used in the production of
8 wine by a winery as well as any other plants or other improvements
9 located thereon.

10 “Winery” means a commercial farm where the owner or operator
11 of the commercial farm has been issued and is operating in compliance
12 with a plenary winery license or farm winery license pursuant to
13 R.S.33:1-10.

14

15 2. a. A taxpayer that is a vineyard or winery shall be allowed a
16 credit against the tax imposed pursuant to the “New Jersey Gross
17 Income Tax Act,” N.J.S.54A:1-1 et seq. in an amount equal to 25
18 percent of the qualified capital expenses made in connection with the
19 establishment of a new vineyard or winery or the capital improvements
20 made to an existing vineyard or winery during each taxable year in
21 which the qualified vineyard or winery is operated for a profit by the
22 taxpayer.

23 b. The total value of the grants of tax credits approved by the
24 director, pursuant to subsection a. of this section and subsection a. of
25 section 6 of P.L. , c. (C.) (pending before the Legislature as this
26 bill), that may be applied against tax liability for a taxable year shall
27 not exceed an aggregate annual limit of \$3,000,000. The total amount
28 of tax credits allowed for a taxpayer by this subsection shall not
29 exceed \$250,000, to be applied for over no more than a period of 10
30 tax years. The amount applied against a tax liability for a taxable year
31 for an individual vineyard or winery may not exceed \$50,000. If the
32 amount of tax credits applied for by taxpayers in a taxable year,
33 pursuant to sections 3 and 7 of P.L. , c. (C.) (pending before the
34 Legislature as this bill), exceeds the aggregate annual limit of
35 \$3,000,000, then a taxpayer who has first applied for and has not been
36 allowed a tax credit amount for that reason shall be allowed, in the
37 order in which they have submitted an application, their approved
38 amount of tax credit on the first day of the next succeeding taxable
39 year in which tax credits are issued pursuant to P.L. , c. (C.)
40 (pending before the Legislature as this bill) and are not in excess of the
41 amount of credits available.

42 c. The amount of credit allowed pursuant to subsection a. of this
43 section shall be taken by the taxpayer to reduce the tax otherwise due
44 and required to be paid for the taxable year to which the credit applies.
45 A credit allowed pursuant to subsection a. of this section shall only be
46 taken by the taxpayer to reduce the tax otherwise due and required to
47 be paid for the taxable year in which the vineyard or winery is
48 conducted or operated for a profit by the taxpayer.

1 d. A vineyard or winery that is classified as a partnership for
2 federal income tax purposes shall not be allowed a credit directly, but
3 the amount of credit of a taxpayer in respect of a distributive share of
4 partnership income shall be determined by allocating to the taxpayer
5 that proportion of the credit acquired by the partnership that is equal to
6 the taxpayer's share, whether distributed, of the total distributive
7 income or gain of the partnership for its taxable year ending within or
8 with the taxpayer's taxable year except as otherwise provided by law.
9 A qualified vineyard or winery that is a New Jersey S Corporation
10 shall not be allowed a credit directly, but the amount of credit of a
11 taxpayer in respect of a pro rata share of S Corporation income shall
12 be determined by allocating to the taxpayer that proportion of the
13 credit acquired by the New Jersey S Corporation that is equal to the
14 taxpayer's share, whether or not distributed, of the total pro rata share
15 of S Corporation income of the New Jersey S Corporation for its
16 privilege period ending within or with the taxpayer's taxable year
17 except as otherwise provided by law.

18
19 3. a. Notwithstanding the provisions of section 2 of
20 P.L. , c. (C.) (pending before the Legislature as this bill) to
21 the contrary, a taxpayer shall not be permitted to take any credits
22 pursuant to section 2 of P.L. , c. (C.) (pending before the
23 Legislature as this bill) to reduce or offset the New Jersey gross
24 income tax liability that is incurred and required to be paid by the
25 taxpayer in connection with the conduct or operation of a vineyard
26 or winery unless the taxpayer has obtained prior written
27 authorization from the director pursuant to this section.

28 b. The director shall establish an application process and
29 prescribe the form and manner through which a taxpayer may make
30 and file an application to obtain the director's written authorization
31 for the allowance of a credit. The application shall, at minimum,
32 require the taxpayer to demonstrate, in a form and manner as shall
33 be prescribed by the director, that the qualified vineyard or winery
34 for which the taxpayer is seeking the director's written
35 authorization for the allowance of a credit is unrelated to the
36 conduct or operation of any other business that was, or is currently,
37 conducted or operated by the taxpayer. If the vineyard or winery
38 and any other business that was, or is currently, conducted or
39 operated by the taxpayer are determined by the director to be related
40 by common ownership, the use of similar business names,
41 trademarks, or service marks, or the conduct of similar business
42 activities or operations, then the taxpayer shall demonstrate that the
43 vineyard or winery was not established or acquired for the purpose
44 of enjoying the benefit of the credit.

45 c. The director shall review each application made and filed by
46 a taxpayer pursuant to subsection b. of this section and make a
47 determination regarding the approval of an application seeking the
48 director's written authorization for the allowance of a credit within
49 90 calendar days of the date a completed application is received.

1 d. The director shall issue a written authorization for the
2 allowance of a credit to each taxpayer that made and filed a
3 complete application that has been reviewed and approved by the
4 director pursuant to subsection c. of this section within five
5 calendar days of the date the director's determination is made.
6 Each taxpayer issued a written authorization for the allowance of a
7 credit shall include a copy of the director's authorization when
8 filing a return that includes a claim for the credit allowed pursuant
9 to section 2 of P.L. , c. (C.) (pending before the Legislature
10 as this bill).

11 e. If the director fails to make a determination regarding the
12 approval of an application seeking the director's written
13 authorization for the allowance of a credit within 90 calendar days
14 of the date a complete application is received, or if the director fails
15 to issue a written authorization for the allowance of a credit within
16 five calendar days of the date the director's determination is made,
17 the application shall be deemed to have been approved and the
18 written authorization shall be deemed to have been issued by the
19 director. Each taxpayer that made and filed a complete application
20 pursuant to subsection b. of this section but fails to receive a
21 determination from the director within 90 calendar days of the date
22 a complete application is received, or fails to receive a written
23 authorization for the allowance of a credit within five calendar days
24 of the date the director's determination is made, shall include a
25 copy of the taxpayer's application when filing a return that includes
26 a claim for the credit pursuant to section 2 of P.L. , c. (C.)
27 (pending before the Legislature as this bill).

28
29 4. Notwithstanding any provisions of the "Administrative
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the director
31 may adopt immediately upon filing with the Office of
32 Administrative Law, rules and regulations as the director
33 determines to be necessary to effectuate the purposes of P.L. , c.
34 (C.) (pending before the Legislature as this bill), which shall be
35 effective for a period not to exceed 360 calendar days following the
36 effective date of P.L. , c. (C.) (pending before the
37 Legislature as this bill) and may thereafter be amended, adopted, or
38 readopted by the director pursuant to the requirements of
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
40 seq.).

41
42 5. As used in sections 6 through 8 of P.L. , c. (C.)
43 (pending before the Legislature as this bill):

44 "Acquiring corporation" means the constituent corporation the
45 stockholders of which own the largest proportion of the total voting
46 power in the surviving or consolidated corporation after the merger or
47 consolidation.

48 "Director" means the Director of the Division of Taxation in the
49 Department of the Treasury.

1 “Qualified capital expense” means any expenditure made by the
2 taxpayer for the purchase and installation of equipment or agricultural
3 materials for use in the production of agricultural products at a
4 vineyard or winery, including:

- 5 a. barrels;
- 6 b. bins;
- 7 c. bottling equipment;
- 8 d. canopy management machines;
- 9 e. capsuling equipment;
- 10 f. chemicals;
- 11 g. corks;
- 12 h. crushers;
- 13 i. deer control fencing;
- 14 j. destemmers;
- 15 k. fermenters or other recognized fermentation devices;
- 16 l. fertilizer and soil amendments;
- 17 m. filters;
- 18 n. fruit harvesters;
- 19 o. fruit plants;
- 20 p. hoses;
- 21 q. irrigation equipment;
- 22 r. labeling equipment;
- 23 s. lugs;
- 24 t. mowers;
- 25 u. poles;
- 26 v. posts;
- 27 w. presses;
- 28 x. pruning equipment;
- 29 y. pumps;
- 30 z. refractometers;
- 31 aa. refrigeration equipment;
- 32 bb. seeders;
- 33 cc. soil;
- 34 dd. small tools;
- 35 ee. tanks;
- 36 ff. tractors;
- 37 gg. vats;
- 38 hh. weeding and spraying equipment;
- 39 ii. wine tanks;
- 40 jj. wire; and
- 41 kk. any other items as approved by the director in consultation
42 with the Secretary of Agriculture.

43 “Vineyard” means agricultural lands located in the State consisting
44 of at least 1 contiguous acre dedicated to the growing of grapes or
45 other fruit that are used or are intended to be used in the production of
46 wine by a winery as well as any other plants or other improvements
47 located thereon.

48 “Winery” means a commercial farm where the owner or operator
49 of the commercial farm has been issued and is operating in compliance

1 with a plenary winery license or farm winery license pursuant to
2 R.S.33:1-10.

3
4 6. a. A taxpayer that is a vineyard or winery shall be allowed a
5 credit against the tax imposed pursuant to the "Corporation Business
6 Tax Act," P.L.1945, c.162 (C.54:10A-1 et seq.) in an amount equal to
7 25 percent of the qualified capital expenses made in connection with
8 the establishment of a new vineyard or winery or the capital
9 improvements made to an existing vineyard or winery during each
10 privilege period in which the qualified vineyard or winery is operated
11 for a profit by the taxpayer.

12 b. The total value of the grants of tax credits approved by the
13 director, pursuant to subsection a. of this section and subsection a. of
14 section 2 of P.L. , c. (C.) (pending before the Legislature as this
15 bill), that may be applied against tax liability for a privilege period
16 shall not exceed an aggregate annual limit of \$3,000,000. The total
17 amount of tax credits allowed for an individual vineyard or winery
18 shall not exceed \$250,000, to be applied for over no more than a
19 period of 10 privilege periods. The amount applied against a tax
20 liability for a privilege period for an individual vineyard or winery
21 may not exceed \$50,000. If the amount of tax credits applied for by
22 taxpayers, pursuant to sections 3 and 7 of P.L. , c. (C.)
23 (pending before the Legislature as this bill), exceeds the aggregate
24 annual limit of \$3,000,000, then a taxpayer who has first applied for
25 and has not been allowed a tax credit amount for that reason shall be
26 allowed, in the order in which they have submitted an application,
27 their approved amount of tax credit on the first day of the next
28 succeeding privilege period in which tax credits are issued pursuant to
29 P.L. , c. (C.) (pending before the Legislature as this bill) and
30 are not in excess of the amount of credits available.

31 c. The amount of credit allowed pursuant to subsection a. of this
32 section shall be taken by the taxpayer to reduce the tax otherwise due
33 and required to be paid for the privilege period to which the credit
34 applies. A credit allowed pursuant to subsection a. of this section shall
35 only be taken by the taxpayer to reduce the tax otherwise due and
36 required to be paid for the privilege period in which the vineyard or
37 winery is conducted or operated for a profit by the taxpayer.

38 d. Except as provided in subsection e. of this section, the amount
39 of tax year credit otherwise allowable under this section which cannot
40 be applied for the privilege period against tax liability otherwise due
41 for that tax year may either be carried over, if necessary, for the 10
42 privilege periods following the privilege period for which the credit
43 was allowed or, at the election of the taxpayer, be claimed as and
44 treated as an overpayment for the purposes of R.S.54:49-15, provided,
45 however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not
46 apply.

47 e. A taxpayer may not carry over any amount of credit allowed
48 under subsection a. of this section to a privilege period during which a
49 corporate acquisition with respect to which the taxpayer was a target

1 corporation occurred or during which the taxpayer was a party to a
2 merger or a consolidation, or to any subsequent privilege period, if the
3 credit was allowed for a privilege period prior to the year of
4 acquisition, merger, or consolidation, except that if in the case of a
5 corporate merger or corporate consolidation, the taxpayer can
6 demonstrate, through the submission of a copy of the plan of merger or
7 consolidation and any other evidence that may be required by the
8 director, the identity of the constituent corporation which was the
9 acquiring corporation, a credit allowed to the acquiring person may be
10 carried over by the taxpayer.

11

12 7. a. Notwithstanding the provisions of section 6 of
13 P.L. , c. (C.) (pending before the Legislature as this bill) to
14 the contrary, a taxpayer shall not be permitted to take any credits
15 pursuant to section 6 of P.L. , c. (C.) (pending before the
16 Legislature as this bill) to reduce or offset the New Jersey
17 corporation tax liability that is incurred and required to be paid by
18 the taxpayer in connection with the conduct or operation of a
19 vineyard or winery unless the taxpayer has obtained prior written
20 authorization from the director pursuant to this section.

21 b. The director shall establish an application process and
22 prescribe the form and manner through which a taxpayer may make
23 and file an application to obtain the director's written authorization
24 for the allowance of a credit. The application shall, at minimum,
25 require the taxpayer to demonstrate, in a form and manner as shall
26 be prescribed by the director, that the qualified vineyard or winery
27 for which the taxpayer is seeking the director's written
28 authorization for the allowance of a credit is unrelated to the
29 conduct or operation of any other business that was, or is currently,
30 conducted or operated by the taxpayer. If the vineyard or winery
31 and any other business that was, or is currently, conducted or
32 operated by the taxpayer are determined by the director to be related
33 by common ownership, the use of similar business names,
34 trademarks, or service marks, or the conduct of similar business
35 activities or operations, then the taxpayer shall demonstrate that the
36 vineyard or winery was not established or acquired for the purpose
37 of enjoying the benefit of the credit.

38 c. The director shall review each application made and filed by
39 a taxpayer pursuant to subsection b. of this section and make a
40 determination regarding the approval of an application seeking the
41 director's written authorization for the allowance of a credit within
42 90 calendar days of the date a completed application is received.

43 d. The director shall issue a written authorization for the
44 allowance of a credit to each taxpayer that made and filed a
45 complete application that has been reviewed and approved by the
46 director pursuant to subsection c. of this section within five
47 calendar days of the date the director's determination is made.
48 Each taxpayer issued a written authorization for the allowance of a
49 credit shall include a copy of the director's authorization when

1 filing a return that includes a claim for the credit allowed pursuant
2 to section 6 of P.L. , c. (C.) (pending before the Legislature
3 as this bill).

4 e. If the director fails to make a determination regarding the
5 approval of an application seeking the director's written
6 authorization for the allowance of a credit within 90 calendar days
7 of the date a complete application is received, or if the director fails
8 to issue a written authorization for the allowance of a credit within
9 five calendar days of the date the director's determination is made,
10 the application shall be deemed to have been approved and the
11 written authorization shall be deemed to have been issued by the
12 director. Each taxpayer that made and filed a complete application
13 pursuant to subsection b. of this section but fails to receive a
14 determination from the director within 90 calendar days of the date
15 a complete application is received, or fails to receive a written
16 authorization for the allowance of a credit within five calendar days
17 of the date the director's determination is made, shall include a
18 copy of the taxpayer's application when filing a return that includes
19 a claim for the credit pursuant to section 6 of P.L. , c. (C.)
20 (pending before the Legislature as this bill).

21
22 8. Notwithstanding any provisions of the "Administrative
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the director
24 may adopt immediately upon filing with the Office of
25 Administrative Law, rules and regulations as the director
26 determines to be necessary to effectuate the purposes of P.L. , c.
27 (C.) (pending before the Legislature as this bill), which shall be
28 effective for a period not to exceed 360 calendar days following the
29 effective date of P.L. , c. (C.) (pending before the
30 Legislature as this bill) and may thereafter be amended, adopted, or
31 readopted by the director pursuant to the requirements of
32 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
33 seq.).

34
35 9. This act shall take effect immediately and apply to tax
36 liabilities incurred and required to be paid in connection with
37 qualified capital expenses first purchased in taxable years and
38 privilege periods beginning on and after January 1, 2017 and shall
39 expire with privilege periods and taxable years first commencing
40 after January 1, 2027.

41 42 43 STATEMENT 44

45 This bill would provide credits against the New Jersey gross
46 income tax and corporation business tax, as applicable, to vineyards
47 and wineries for qualified capital expenses, as defined in the bill, in
48 an amount equal to 25 percent of the qualified capital expenses
49 made in connection with the establishment of a new vineyard or

1 winery or the capital improvements made to an existing vineyard or
2 winery during each privilege period in which the qualified vineyard
3 or winery is operated for a profit by the taxpayer.

4 Under the bill a “qualified capital expense” is defined as any
5 expenditure made by the taxpayer for the purchase and installation
6 of equipment or agricultural materials for use in the production of
7 agricultural products at a vineyard or winery. The bill, as includes
8 a list of items that qualify as vineyard or winery equipment or
9 agricultural materials.

10 The amount of the credit allowed would be taken by the taxpayer
11 to reduce the tax otherwise due and required to be paid for the
12 privilege period to which the credit applies. The bill would
13 authorize a credit to only be taken by the taxpayer to reduce the tax
14 otherwise due and required to be paid for the privilege period in
15 which the vineyard or winery is conducted or operated for a profit
16 by the taxpayer.

17 The bill would provide that the total value of the grants of tax
18 credits approved by the Director of Taxation that may be applied
19 against a gross income and corporation tax liability for a privilege
20 period shall not exceed an aggregate annual limit of \$3,000,000.
21 Each gross income taxpayer or individual vineyard or winery
22 paying corporation business tax would be allowed a total of
23 \$250,000 in tax credits to be taken over a 10 year period, and no
24 more than \$50,000 per tax year or privilege period, as applicable. If
25 the amount of tax credits applied for by taxpayers exceeds the
26 aggregate annual limit of \$3,000,000, then a taxpayer who has first
27 applied for and has not been allowed a tax credit amount for that
28 reason would then be allowed, in the order in which they have
29 submitted an application, their approved amount of tax credit on the
30 first day of the next succeeding privilege period in which tax credits
31 are issued and are not in excess of the amount of credits available.

32 Under the bill, a taxpayer would not be permitted to take any
33 credits to reduce or offset the New Jersey gross income tax liability
34 or corporation tax liability that is incurred and required to be paid
35 by the taxpayer in connection with the conduct or operation of a
36 vineyard or winery unless the taxpayer has obtained prior written
37 authorization from the director. The director would establish an
38 application process and prescribe the form and manner through
39 which a taxpayer could make and file an application to obtain the
40 director’s written authorization for the allowance of a credit.

41 The bill would expire with privilege periods or taxable years, as
42 applicable, first commencing after July 1, 2027.